No. 14

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT FORTIER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

CITATIONS

Cases:

Cases—Continued

Miscellaneous—Continued

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 14

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT FORTIER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

This reply brief is directed to (1) certain arguments made by respondents on the question presented by the Government's petition for certiorari, and (2) the defensive matters which respondents raise (Resp. br. 23–36) but which the Court of Appeals did not consider.

I

A. *Amendments to Priorities Regulation No. 33.*—At pages 11–13 of their brief, respondents apparently argue that, immediately after the repeal of the Veterans Emergency Housing Act of 1946 on June 30, 1947, the Housing Expediter interpreted the repealing statute as cutting off his

power to maintain and enforce maximum sales prices which had been established as a part of, and a condition to, the grant of construction-authorization and priorities assistance under the 1946 Act. The truth is, as we point out at pages 32–33 of our main brief, that from the time of its passage the Housing Expediter (and his delegate, the Federal Housing Administration) construed Section 1 (a) of the Housing and Rent Act of 1947 as continuing in full force and effect those maximum sales prices, and it was on that basis that a great number of applications for price increases were accepted and processed from June 30, 1947 to December 31, 1947. In fact, the Housing Expediter vigorously defended a purchasers' suit against him which claimed that he (and his delegates) had been divested of all authority to grant price increases after June 30, 1947, but that the original maximum prices nevertheless continued in effect. *Nesseth* v. *Creedon*, 80 F. Supp. 269, 273 *et seq.* (D. Minn.). It was the Expediter's contention, which the court adopted, that the 1947 Act continued in effect both the maximum prices and the Expediter's power to increase them.

As both respondents, and our main brief point out (Govt.'s main br., p. 32; Resp. br., pp. 11–13), the Expediter did amend, immediately after the enactment of the 1947 Act, the veterans' preference and maximum *rent* provisions of Priori-

ties Regulation No. 33. But these two changes were made because the Housing and Rent Act of 1947 expressly indicated that its new and specific provisions as to veterans' preference and maximum rents were thereafter to be controlling in all cases, including situations previously governed by different rules promulgated under the 1946 Act. Section 4 (a) of the 1947 Act provided that its veterans' preference requirements were to control *all* dwellings "completed after the date of enactment of this title [*i. e.*, June 30, 1947] and prior to March 1, 1948," and added, by way of explicit clarification, that these new requirements were not to "affect or remove any veteran's preference requirements heretofore established under Public Law 388, Seventy-ninth Congress [*i. e.*, the Veterans' Emergency Housing Act of 1946], and outstanding with respect to housing accommodations *completed prior to the date of the enactment of this title.*" 61 Stat. 195–196, 50 U. S. C. App, Supp. I, 1884 (a) (italics supplied). Congress clearly established a permanent statutory veterans' preference system for all new housing, whether priorities-assisted or not.

As for maximum rents (which had also been established, in some cases, under Priorities Regulation No. 33) Title II of the 1947 Act ("Maximum Rents") indicated that maximum rents of any kind were thereafter to be established and

maintained only in certain localities and circumstances, and that all rent control was thereafter to be carried on only under the provisions of Title II.[1] Accordingly, the Expediter amended Priorities Regulation No. 33 to conform to the new rent requirements which Congress had imposed on all housing. 12 F. R. 4434.

The 1947 Act did not contain comparable provisions regarding maximum *sales prices,* and therefore the Expediter did not find it necessary to amend the Regulation, in that respect, in order to conform to the new Act. Instead, as stated above, the maximum price requirements of Priorities Regulation No. 33 continued in full force.

[1] Section 202 of the 1947 Act provided in part (61 Stat. 197):

* * * * * * *

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

* * * * * * *

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946 [*i. e.*, the Veterans' Emergency Housing Act of 1946], shall remain in full force and effect; or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

and effect until the regulation was revoked on December 31, 1947.

In this same connection, we may also point out the error in the inference drawn by the Court of Appeals (R. 57) from the fact that, in the 1947 Act, Congress dealt in specific terms with some aspects of veterans' housing. The court seemed to think that, since Congress addressed itself in terms to the problem of veterans' preference, it would also have dealt expressly with maximum sales prices if it had intended to keep them in force. But, as pointed out above, Congress dealt in detail with the problem of veterans' preference and maximum rents because it desired to change and amend the existing regulations and requirements, to establish certain new requirements, and to enact a sort of statutory code on these subjects. Having no such purpose with respect to maximum selling prices, Congress found it unnecessary to mention them *in haec verba;* as our main brief shows, the savings clause in Section 1 (a) was both sufficient to keep the old sales price requirements in effect and an apt vehicle for that purpose. The words "allocations made or committed, or priorities granted * * * shall remain in full force and effect" continued in effect (until changed by regulation) all aspects of the grant of priorities assistance and construction authorization.

B. *Legislative history of the 1947 Act.*—The legislative history quoted by respondents at pp.

14–16 of their brief does not support their position.

As we point out in footnote 14 of our main brief (pp. 26–7), after the expiration of general price control, in the Fall of 1946, the Housing Expediter decided to eliminate maximum sales prices on houses (i) not yet under construction *and* (ii) as to which construction authorization and priorities assistance had not been secured under either Priorities Regulation No. 33 or Priorities Regulation No. 5. This was done by Housing Permit Regulation No. 1 (HPR), issued December 24, 1946. This Regulation also provided that a person to whom a priority and construction authorization had been granted under Priorities Regulation No. 33 or No. 5, but who had not begun the construction of all the dwellings approved in his application, might choose to return his priority to FHA and to apply for a permit under the HPR (thus eliminating the sales price restriction) for the construction of the dwellings on which construction had not begun.[2]

All of the material quoted by respondents from Housing Expediter Creedon's testimony, in March 1947, before the House Committee on Banking and Currency deals either with (a) the terms and effect of this new Housing Permit

[2] Respondents were not eligible to make application under the provisions of the HPR because their two houses had already been begun. In any event, they made no such application.

Regulation (HPR), which had been issued on December 24, 1946, or with (b) the fact that price controls on building *materials and supplies* had been lifted in the Fall of 1946. Mr. Creedon did not say or intimate that house maximum sales prices would not, or should not, be continued on houses already being constructed under a grant of priorities assistance and construction authorization. On the contrary, he specifically said at the very same hearing: "The maximum sales price limitation continues in effect only on housing which has the benefit of priorities assistance. Granting of priorities was discontinued on December 25, 1946." Hearings before the House Committee on Banking and Currency on H. R. 2549, 80th Cong., 1st Sess., at p. 40. And all of his remarks—including those quoted by respondents—show that he considered every commitment which had been made as a part of the prior grant of priorities assistance and construction authorization to be still in effect.[3] He did not say or suggest that the maximum price restriction had been eliminated on housing then in construction or that it was not still a part of, or a condition to, the grant to the builder.

Moreover, the later colloquy which we quote at pp. 29–31 of our main brief is the only portion of the legislative history of the 1947 Act specifi-

[3] For instance, he was careful to say, not that priorities ceased or were eliminated on December 24, 1946, but that the "issuance of them" stopped on that date. See Resp. br., p. 15.

cally directed toward the purpose and meaning of Section 1 (a), which preserved all "allocations made or committed" and "priorities granted" under the 1946 Act; and that significant interchange shows affirmatively that price commitments made under the 1946 Act were preserved by Section 1 (a). As we have just shown, nothing said by Mr. Creedon clashes with that understanding.

II

The issues discussed by respondents at pages 23–35 of their brief were not adverted to by the majority of the court below. We do not know whether the Court, if it sustains the Government's position on the main issue, will care to pass upon these other matters of defense or whether it will prefer to remand the case to the First Circuit for consideration of those issues. We set forth the Government's position on these questions, so that the Court may have it available if the issues are reached.

A. *Suit by the United States for restitution.*—In Point II of our main brief (pp. 45–48), we urge that the United States may bring this type of restitution action and need not wait until one year after the sale. *United States* v. *Moore*, 340 U. S. 616—a maximum rent case—seems to us to be controlling on the right of the United States to sue for restitution even though maximum price restrictions and the Veterans' Emergency

Housing Act of 1946 are no longer in effect. In addition, three circuits have so held with respect to maximum sales price restrictions on priority-assisted housing. *United States* v. *Carter*, 171 F. 2d 530 (C. A. 5); *Keele* v. *United States*, 178 F. 2d 766 (C. A. 5); *United States* v. *Murtaugh*, 190 F. 2d 407, 408 (C. A. 4); *Doernhoefer* v. *United States*, C. A. 8, No. 14,263, decided July 30, 1951, pending on supplemental petition for rehearing based on the main issue in the present case (*i. e.*, post-June 30, 1947 sales). Several district courts have also so held.

190 F. 2d 358

Respondents seem to suggest that, although the wording of Section 206 (b) of the Housing and Rent Act of 1947 (involved in the *Moore* case) is substantially identical with Section 7 (a) of the Veterans' Emergency Housing Act of 1946 (involved here), a difference in construction is required by the legislative history of the 1946 Act. The suggestion appears to be that Congress eliminated a specific provision giving the United States the right to bring a money suit and thus must have intended to withdraw the authority to sue for restitution which would otherwise have been found in Section 7 (a). Resp. br., pp. 9, 24.[4]

As it was introduced and passed the House, the bill which became the Veterans' Emergency Housing Act of 1946 contained a separate provi-

[4] The *amicus curiae* brief filed on behalf of Elmer G. Doernhoefer makes this point at greater length.

sion—in addition to the general subsection which became Section 7 (a)—empowering the purchaser to sue, within one year of the violation of a maximum price requirement, for *treble* damages, and also providing that "if the buyer fails to bring an action under this subsection within 60 days from the date of the violation, the Expediter may bring such action on behalf of the United States within 1 year from the date of the violation. If such action is brought by the Expediter, the buyer shall thereafter be barred from bringing an action for the same violation." 92 Cong. Rec. 1997; H. Rept. No. 1580, 79th Cong., 2d Sess., p. 17. The same provision was retained by the Senate Committee. S. Rept. No. 1130, 79th Cong., 2d Sess., p. 12. On the floor of the Senate, permission to the buyer to sue for "treble" damages was first eliminated (92 Cong. Rec. 3326–7), and then the right of the United States to bring an action, upon failure of the buyer to sue, was deleted. 92 Cong. Rec. 3430. This change was accepted by the conference committee and the House. H. Rept. No. 2000, 79th Cong., 2d Sess., p. 12. Section 7 (d) of the 1946 Act (Govt's main br., pp. 55–56) contains the provision for single damage suits by the buyer which the Congress retained.

This history does not cast any doubt on the right of the United States to bring suit for restitution under Section 7 (a) because it plainly "deals with different matters." Circuit Judge Russell (then

District Judge) in *United States* v. *Bryan*, N. D. Ga., Civ. Action No. 3446, Sept. 21, 1949. The suit which Congress eliminated was a suit "on behalf of the United States" for *statutory damages* for a sale at an over-ceiling price *and the recovery would go to the United States and not to the veteran-purchaser.* Apparently, the 79th Congress did not want this particular remedy—which had been added in 1944 to the Emergency Price Control Act of 1942 and which was, after a period of non-use, re-adopted for rent cases by the 1949 amendments to the Housing and Rent Act of 1947—to be employed in this class of case. See 92 Cong. Rec. 3326–3327 (Sen. Barkley).[5]

[5] The eliminated provision was substantially the same as Section 205 (e) of the Emergency Price Control Act of 1942, as amended by the Stabilization Extension Act of 1944. 58 Stat. 632, 640–1. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 401–2. The Housing and Rent Act of 1947, as originally enacted, did not contain any similar provision, but one was added for rent cases (Section 205) by the Act of March 30, 1949, Title II, Sec. 204, 63 Stat. 27, because Congress felt that the previous provisions of the 1947 Act had not proven effective in securing compliance. S. Rept. No. 127, 81st Cong., 1st Sess., pp. 10–11, 17.

Under these provisions (*i. e.*, Section 205 (e) of the Emergency Price Control Act of 1942, and Section 205 of the Housing and Rent Act of 1947, as amended), the recovery goes to the United States. *Porter* v. *Warner Holding Co.*, 328 U. S. at 401–2, 406; *Orenstein* v. *United States*, C. A. 1st, Nos. 4556–7, decided July 25, 1951; *United States* v. *Gianoulis*, 183 F. 2d 378 (C. A. 3); *Mattox* v. *United States*, 187 F. 2d 406 (C. A. 9), pending on petition for a writ of certiorari, No. 110, this Term; *Miller* v. *United States*, 186 F. 2d 937, pending on petition for a writ of certiorari, No. 182, this Term.

But there was no indication that the separate remedy of restitution, in which the recovered money goes to the purchaser, was also to be eliminated. On the contrary, Congress used the same words in Section 7 (a) which it had earlier used in Section 205 (a) of the Emergency Price Control Act of 1942 (the basis of *Porter* v. *Warner Holding Co.*, 328 U. S. 395) and later used in Section 206 (b) of the Housing and Rent Act of 1947 (the basis of *United States* v. *Moore*, 340 U. S. 616). Only the separate and distinct remedy of statutory damages collectible by the United States was eliminated.[6]

---

[6] In *Porter* v. *Warner Holding Co.*, *supra*, at p. 402, the Court held that the 1944 addition of section 205 (e) to the Emergency Price Control Act of 1942 did not "whittle down the equitable jurisdiction recognized by § 205 (a) so as to preclude a suit for restitution." Similarly, the elimination of a provision comparable to Section 205 (e) from the Veterans' Emergency Housing Act of 1946 could not whittle down the equitable jurisdiction granted by Section 7 (a). In this connection, it is noteworthy that although the Housing and Rent Act of 1947, as originally enacted on June 30, 1947, contained no provision for statutory damages for violation of rent ceilings (see fn. 5, *supra*), the courts had no difficulty in ordering restitution, under Section 206 (b), during the period from June 30, 1947 to March 30, 1949 (when the provision for damages was added).

On the separateness of the remedies of restitution and statutory damages, see the Government's brief in opposition in No. 110, this Term, *Mattox* v. *United States*, at pp. 8–10.

B. *Jury trial.*—If the respondents are still insisting on their demand for jury trial (see Resp. br., p. 29), the answer is that a restitution action is an equitable cause (*Porter* v. *Warner Holding Co.*, 328 U. S. 395, 398, 399, 400, 401, 402, 403; *United States* v. *Moore*, 340 U. S. 616, 619) and defendants are not entitled to a jury trial in equitable causes. *Parsons* v. *Bedford*, 3 Pet. 433, 446–7; *Labor Bd.* v. *Jones & Laughlin*, 301 U. S. 1, 48. This has been the uniform holding in rent restitution cases, both under the Emergency Price Control Act of 1942 and the Housing and Rent Act of 1947. *McCoy* v. *Woods*, 177 F. 2d 354, 355 (C. A. 4); *McCoy* v. *Woods*, 177 F. 2d 355, 356 (C. A. 4); *Orenstein* v. *United States*, C. A. 1, No. 4556, decided July 25, 1951; *Co-Efficient Foundation, Inc.* v. *Woods*, 171 F. 2d 691, 693–4 (C. A. 5); *United States* v. *Friedland*, 94 F. Supp. 721, 723–724 (D. Conn.); *United States* v. *Cowen's Estate*, 91 F. Supp. 331, 332 (D. Mass.); *United States* v. *Shaughnessy*, 86 F. Supp. 175 (D. Mass.); *United States* v. *Hart*, 86 F. Supp. 787, 789 (E. D. Va.); *United States* v. *Strymish*, 86 F. Supp. 999, 1000 (D. Mass.); *Woods* v. *Hodge*, 88 F. Supp. 262, 263 (W. D. La.); *Woods* v. *Blake*, 84 F. Supp. 570, 572 (D. N. J.); *Woods* v. *Sofronski*, No. 7801 (E. D. Pa.); *Woods* v. *Stein* (E. D. Wash.), decided July 20, 1948; *Woods* v. *Deep Vein Connellsville Coal Co.*, No. 7518

(W. D. Pa.); *Woods* v. *Swanson* No. 7560 (W. D. Pa.), decided January 10, 1950, Maris, C. J. sitting; *Woods* v. *Wilson,* No. 7830 (E. D. Pa.); *Woods* v. *Zellars,* No. 9314 (E. D. Pa.).[7]

The few district courts which have had occasion to pass on the question in a suit for restitution of an over-ceiling sales price under Section 7 (a) of the Veterans' Emergency Housing Act of 1946, here involved, have made the same holding. *United States* v. *Main,* N. D. Ohio, Civil Action No. 26,379, decided May 15, 1950; *United States* v. *White,* N. D. Ala., Civil Action No. 786, decided June 7, 1951; instant case (D. N. H.), at R. 16.

C. *Alleged "equitable defenses".*—Great stress is laid by respondents on a number of factors which they claim as "equitable defenses" barring relief in this case (Resp. br., pp. 29–36). Restitution, it is true, is an equitable action and the chancellor has a degree of discretion in granting and molding relief. *Porter* v. *Warner Holding Co., supra; United States* v. *Moore, supra;* cf. *Hecht Co.* v. *Bowles,* 321 U. S. 321. But it is also true that in a statutory restitution proceeding

[7] There is a split of decisions on the different question of whether the defendant is entitled to a jury trial where the action is for statutory damages under Section 205 of the Housing and Rent Act of 1947, as added by the Act of March 30, 1949, sec. 204, 63 Stat. 27 (*supra*, p. 11). The *Orenstein, Friedland, Strymish,* and *Hart* cases, *supra,* hold that the defendant is so entitled; the *Shaughnessy* case, and some unreported district court decisions, hold that he is not. The issue is currently being litigated.

this discretion is confined by, and must be exercised in the light of, the important public objectives Congress seeks to attain by the particular statute. See *Hecht Co.* v. *Bowles, supra,* at 330–331; *Porter* v. *Warner Holding Co., supra,* at 400, 402; *United States* v. *Moore, supra,* at 619. Applying this standard, equity courts have not been moved in comparable cases to deny restitution because of the factors which respondents present here.[8]

1. Greatest emphasis is put by respondents upon the fact that extras and additions were made to the plans originally filed with the F. H. A., and it is claimed that F. H. A. would have increased the prices, if application had been made to it; it is said, moreover, that the houses were fully worth what was paid for them, that the purchasers received full value for their money, and that they will be the recipients of a "windfall" if restitution is ordered. See Resp. br., p. 32 *et seq.* Similar arguments have uniformly been rejected by the Courts of Appeals in rent restitution cases where landlords have proved increased services or furnishings and have sought to bar restitution to the tenant of an overceiling rent on that ground. In each case, the appellate court has said that the landlord should have resorted to the established administrative procedure

[8] The District Court rejected all of these so-called "equitable defenses". See R. 31, 32–34, 35–36, 38, 39, 47–48.

in order to secure his desired increase in maximum rent, and cannot be heard to say that, despite his failure, equity will take account of the increased value of the lodgings furnished the tenant. *Elma Realty Co.* v. *Woods*, 169 F. 2d 172, 174 (C. A. 1); *Woods* v. *Dodge*, 170 F. 2d 761, 763 (C. A. 1); *Forde* v. *United States*, 189 F. 2d 727, 730–1 (C. A. 1); *Woods* v. *Polis*, 180 F. 2d 4, 6–7 (C. A. 3); *Creedon* v. *Olinger*, 170 F. 2d 895, 897 (C. A. 5); *United States* v. *Sharp*, 188 F. 2d 311, 313 (C. A. 9); cf. *Thierry* v. *Gilbert*, 147 F. 2d 603, 604 (C. A. 1) (statutory damage action for overceiling rent).

Like all of those landlords, respondents had an accessible administrative procedure by which to obtain an increase in the ceiling price and permission to make additions and to change the plans and specifications. See R. 31–2, 31; Govt's main brief, pp. 4, 9, 26 (fn. 14), 33, 44, 59, 60–1.[9] They did not make use of this procedure, and the teaching of the cases is that the restitution court will not substitute itself for the administrative agency even though the defendant was "undoubtedly entitled to an upward adjustment" (169 F. 2d at 174) or the result seems harsh to the defendant and indulgent to the person to whom restitution is ordered (170 F. 2d at 763,

[9] It is to be noted that on December 13, 1946, the expediter removed the over-all $10,000 limitation on sales prices which had previously been in effect. Govt's main brief, p. 26, fn. 14.

896).[10] Vindication of the public interest in maintaining required procedures and in obedience to lawful regulation takes precedence over the balancing of purely private interests.[11]

2. These considerations are even more potent in overceiling sales price restitution cases brought under Section 7 (a) of the Veterans' Emergency Housing Act of 1946 because these actions seek to enforce two special public interests which override private builder-purchaser "equities". The first stems from the use of maximum prices and official approval-of-specifications as twin engines for the conservation of scarce materials (see Govt's main brief, pp. 19–27). For the builder to make additions and incorporate extras without official approval, as respondents did, may possibly not be harmful to the purchaser, but it clearly violates the builder's obligation to the Government to conserve building materials, and *pro tanto* impairs one important objective of the grant of priorities assistance and construction authorization. In these circumstances, even though a restitution order be thought to bring an unfair "windfall" to the purchaser at the

[10] *Doernhoefer* v. *United States*, C. A. 8, No. 14,263, decided July 30, 1951 (*supra*, p. 9), upheld the trial court's refusal, in a restitution action under Section 7 (a), to allow an F. H. A. witness to testify that he would have given the builder an increase in maximum sales price, if application had been made.

[11] For the same reasons, "inspections" by an F. H. A. representative who is alleged to have seen the additions and said nothing (Resp. br., pp. 4, 32) must be put aside. See, also, fn. 13, *infra*, p. 20.

expense of the builder, it is fully appropriate as an order enforcing compliance and obedience with the statute and the regulation in their public aspects. Cf. *Ebeling* v. *Woods*, 175 F. 2d 242, 245 (C. A. 8); *Beatty* v. *United States*, C. A. 8, No. 14, 198, decided September 6, 1951.

The second special interest is the Government's concern with providing housing to veterans "at sales prices or rentals within their means" (Section 1 (a) of the 1946 Act, Govt's main br., p. 50), and at "moderate prices" (Sections 2 (b) and 4 (b), Govt's main br., pp. 51, 53). Congress was not concerned merely with assuring veterans that they would obtain their "money's worth" or "full value". It sought to foster inexpensive housing, housing at moderate prices; and overceiling sales tend to detract from that purpose no matter how valuable the additions or how profitless the sale. The prime statutory aim of channeling scarce building materials into low-cost and moderate-cost housing would obviously be frustrated if builders could construct more expensive and more material-consuming dwellings, without administrative approval, and then resist full restitution of the overcharge by the claim that the excess over the ceiling price merely represented the fair value of the extras and additions.[12]

[12] In *United States* v. *Duke Building Corp.*, 79 F. Supp. 681, 683 (S. D. Fla.), the District Court ordered restitution, in an action under Section 7 (a), even though important additions and extras had been made at the request of the

3. The other factors mentioned by respondents are also unavailing. The fact that a loss was suffered does not defeat restitution in rent overceiling cases and likewise should be ineffective in housing overceiling sales cases. See, to this effect, *United States* v. *Duke Building Corp.*, 79 F. Supp. 681, 683 (S. D. Fla.); *United States* v. *Austin*, D. Md., Civil Action No. 4368, decided January 24, 1951; instant case at R. 33, 35–6, 38, 39, 47–48; *Elmers* v. *Shapiro*, 91 C. A. 2d 741, 755–6, 205 P. 2d 1052, 1060–1; cf. *United States* v. *Schroeder*, 164 F. 2d 647, 648 (C. A. 7); *United States* v. *Elade Realty Corp.*, 157 F. 2d 979, 981 (C. A. 2), certiorari denied, 329 U. S. 810 (criminal overceiling-sales cases). Appraisal of the houses by the Veterans' Administration (for "G. I." loan purposes) at their sales prices (Resp. br. p. 4) is obviously ineffective since Priorities Regulations No. 33 expressly provided that "Approval of a proposed sales price or rent should be considered merely as a limit upon the price or rent to be charged. It should not be considered as a

---

purchasers. In the instant case, the District Court also took the view that additions and extras should not be considered. See R. 33, 34, 35, *et seq.*

In a purchaser's action under Section 7 (d), one district court required the deduction of the expense of additions. *Rheinberger* v. *Reiling*, 89 F. Supp. 598, 602 (D. Minn.). In a similar private action, another district court did not require such a credit. *Pruitt* v. *Litman*, 89 F. Supp. 705, 706 (E. D. Pa.). A State appellate court has expressly approved, in a private action under Section 7 (d), the rule of the *Duke* case, *supra*; *Elmers* v. *Shapiro*, 91 C. A. 2d 741, 755–6, 205 P. 2d 1052, 1060–1.

statement that the sales price or rent represents the value of the dwelling or the apartment for other purposes" (Govt's main br., p. 59). See also, *Keele* v. *Holt,* 171 F. 2d 480 (C. A. 5); *United States* v. *Austin, supra,* p. 19;[13] instant case, at R. 39.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
HOLMES BALDRIDGE,
Assistant Attorney General.
OSCAR H. DAVIS,
Special Assistant to the Attorney General.
SAMUEL D. SLADE,
ARTHUR W. MURPHY,
Attorneys.

OCTOBER 1951.

[13] In the *Austin* case, Judge Chesnut decreed restitution in a case where there were substantial deficiencies in construction and some overceiling sales, even though (1) the builder had acted in full good faith, (2) the purchasers had inspected the houses and did not rely on the plans or specifications; (3) the actual sales prices accorded with V. A. appraisals, (4) the builder was inexperienced in building operations and the applicable administrative procedures, (5) suit was not brought until long after the Veterans' Housing Program had been discontinued, and (6) a Government official had orally and informally told the builder that he could depart from the plans and specifications.

A District Court of Appeal in California has allowed full recovery to a veteran-purchaser, in a private action under Section 7 (d), on similar facts. *Elmers* v. *Shapiro,* 91 C. A. 2d 741, 750 *et seq.*, 205 P. 2d 1052, 1058 *et seq.*

U. S. GOVERNMENT PRINTING OFFICE: 1951